

Chapter VI

GUN PURCHASE AND CAMPUS POLICIES

In investigating the role firearms played in the events of April 16, 2007, the panel encountered strong feelings and heated debate from the public. The panel's investigation focused on two areas: Cho's purchase of firearms and ammunition, and campus policies toward firearms. The panel recognizes the deep divisions in American society regarding the ready availability of rapid fire weapons and high capacity magazines, but this issue was beyond the scope of this review.

FIREARMS PURCHASES

Every person killed at Cho's hands on April 16 was shot with one of two firearms, a Glock 19 9mm pistol or a Walther P22 .22 caliber pistol. Both weapons are semiautomatic, which meant that once loaded, they fire a round with each pull of the trigger, rather than being able to fire continuously by holding the trigger down. Cho purchased the Walther P22 first—by placing an online order with the TGSCOM, Inc., a company that sells firearms over the Internet. Cho then picked up the pistol on February 9, 2007, at J-N-D Pawn-brokers in Blacksburg, which is located just across Main Street from the Virginia Tech campus.

Cho purchased the Glock a month later, on March 13, from Roanoke Firearms in Roanoke. Virginia law limits handgun purchases to one every 30 days, which he may have known judging by this spacing.¹ Cho made his purchases using a credit card. Although his parents gave him money to pay for his expenses, they said they did not receive his credit card bills and did not know what he purchased. They stated that the only time they received an actual billing statement was after his death, and at that point the total bill was over \$3,000.

¹ Va. Code § 18.1-308.2:2(P)

On March 22, 2007, shortly after purchasing the Glock, Cho went to PSS Range and Training, an indoor pistol range in Roanoke. Cho practiced shooting for about an hour.

Cho was not legally authorized to purchase his firearms, but was easily able to do so. Gun purchasers in Virginia must qualify to buy a firearm under both federal and state law. Federal law disqualified Cho from purchasing or possessing a firearm. The federal Gun Control Act, originally passed in 1968, prohibits gun purchases by anyone who has “has been adjudicated as a mental defective or who has been committed to a mental institution.”² Federal regulations interpreting the act define “adjudicated as a mental defective” as “[a] determination by a court, board, commission, or other lawful authority that a person, as a result of ...mental illness ...[i]s a danger to himself or to others.”³ Cho was found to be a danger to himself by a special justice of the Montgomery County General District Court on December 14, 2005. Therefore, under federal law, Cho could not purchase any firearm.

The legal status of Cho's gun purchase under Virginia law is less clear. Like federal law, Virginia law also prohibits persons who have been adjudged incompetent or committed to mental institutions from purchasing firearms.⁴ However, Virginia law defines the terms differently. It defines incompetency by referring to the section of Virginia Code for declaring a person incapable of caring for himself or herself.⁵ It does not specify that a person who had been found to be a danger to self or others is “incompetent.” Because he had not been declared unable to care for himself, it does not appear that Cho was disqualified under this provision of Virginia law.

² 18 U.S.C. § 922(g)(4)

³ 27 C.F.R. § 478.11

⁴ Va. Code §§ 18.2-308.1:2 and 3

⁵ Va. Code § 18.2-308.1:2, citing Va. Code 37.2-1000 et seq.

Virginia law also prohibits “any person who has been involuntarily committed pursuant to Article 5 (§ 37.2-814 et seq.) of Chapter 8 of Title 37.2” from purchasing or possessing a firearm.⁶ This section authorizes a court to order either inpatient or outpatient treatment. When a person is ordered into a hospital, the law is relatively straightforward—the person has been “involuntarily committed.” What is not clear from the statute, however, is whether a person such as Cho, who was found to be a danger to self or others and ordered to receive outpatient treatment, qualifies as being involuntarily committed. Among the mental health community, “involuntary outpatient commitment” is a recognized term for an order for outpatient treatment. In practical terms, a person who is found to be an imminent danger to self or others and ordered into outpatient treatment is little different than one ordered into inpatient treatment. However, the statute does not make clear whether outpatient treatment is covered. Thus, Cho’s right to purchase firearms under Virginia law was not clear.

This uncertainty in Virginia law carries over into the system for conducting a firearms background check. In general, nationally, before purchasing a gun from a dealer a person must go through a background check. A government agency runs the name of the potential buyer through the databases of people who are disqualified from purchasing guns. If the potential purchaser is in the database, the transaction is stopped. If not, the dealer is instructed to proceed with the sale. The agency performing the check varies by state. Some states rely on the federal government to conduct the checks. In others, the state and the federal government both do checks. In yet other states, such as Virginia, the state conducts the check of both federal and state databases. In Virginia the task is given to the state police.

Because purchasers have to be eligible under both state and federal law, potential buyers in Virginia have to fill out two forms: the federal “Firearms Transaction Record” (ATF 4473) and

the Virginia Firearms Transaction Record (SP 65.) (Copies of the forms are provided in Appendix I.) The forms collect basic information about the potential buyer, such as name, age, and social security number. Each form also asks questions to determine whether a buyer is eligible to purchase a weapon. Form 4473 asks 11 questions, such as whether the buyer has been convicted of a felony. SP 65 contains questions and information regarding Virginia law, such as whether restraining orders were issued that disqualify purchasers. Firearms dealers initiate the background check by transmitting information from the forms to the state police’s Firearms Transaction Program.

Certain firearms transfers do not require background checks at all. Virginia law does not require background checks for personal gifts or sales by private collectors, including transactions by collectors that occur at gun shows.

In Virginia, the Central Criminal Records Exchange (CCRE), a division of the state police, is tasked with gathering criminal records and other court information that is used for the background checks. Information on mental health commitment orders “for involuntary admission to a facility” is supposed to be sent to the CCRE by court clerks, who must send all copies of the orders along with a copy of form SP 237 that provides basic information about the person who is the subject of the order.⁷ As currently drafted, the law only requires a clerk to certify a form, and does not specify who should complete the form. Because of the lack of clarity, it was reported to the panel that clerks in some jurisdictions do not send the information unless they receive a completed form. Recommendations to improve this aspect of the law were given in Chapter IV.

The meaning of the term “admission to a facility” is less clear than it might seem. The law appears on an initial reading to only include orders requiring a person to receive inpatient care. This reading seems to have support from the Virginia

⁶ Va. Code § 18.2-308.1:3

⁷ Va. Code § 37.2-819

involuntary commitment statute. That law uses “admission to a facility” when describing inpatient treatment, not outpatient treatment.⁸ But the law is actually more complex. Laws about mental health commitment and sending orders to CCRE all appear in Title 37.2 of the Virginia Code. The definitions for that title state that facility “means a state or licensed hospital, training center, psychiatric hospital, or other type of residential or outpatient mental health or mental retardation facility.”⁹ So while the most obvious reading of the law is that only inpatient orders should be sent to CCRE, the actual requirement is unclear.

At the time Cho purchased his weapons, the general understanding was that only inpatient orders had to be sent to CCRE. Probably due to this understanding, the special justice’s December 14, 2005, order finding Cho to be a danger to himself was not reported to the firearms background check system. Although the law may have been ambiguous, the checking process was not. Either you are or are not in the database when a gun purchase request form is submitted, and Cho was not.

There does not seem to have been an appreciation in setting up this process that the federal mental health standards were different than those of the state or that the practice deprived the federal database of information it needed in order to make the system effective. Thus on February 9 and March 13, 2007, Cho, a person disqualified under federal law from purchasing a firearm, walked into two licensed firearms dealers. He filled out the required forms. The dealers entered his information into the background check system. Both checks told the dealers to proceed with the transaction. Minutes after both checks, Cho left the stores in possession of semi-automatic pistols.

⁸ Va. Code § 37.2-817. Paragraph B describes inpatient orders and uses the term “admitted to a facility”; paragraph C authorizes outpatient commitment but does not use the term “admitted to a facility.”

⁹ Va. Code. § 37.2-100

The FBI indicated in a press release dated April 19, 2007, that just 22 states reported any mental health information to the federal database. Ironically, the FBI cited Virginia as the state that provided the most information on people disqualified due to mental deficiency.¹⁰

In the days following the killings at Virginia Tech, Governor Kaine moved to clarify the law regarding inclusion of outpatient treatment into the database. Executive Order 50 now requires executive branch employees, including the state police, to collect information on outpatient orders and to treat such orders as disqualifications to owning a firearm. The state police revised SP 237 to ensure that they receive information regarding out-patient orders. Copies of the older and revised versions of SP 237 are presented in Appendix J. As previously discussed in Chapter IV, the panel recommends that the General Assembly clarify the relevant laws in this regard to permanently reflect the interpretation of Executive Order 50.

It is not clear whether Cho knew that he was prohibited from purchasing firearms. ATF 4473 asks each potential purchaser “[h]ave you ever been adjudicated mentally defective (which includes having been adjudicated incompetent to manage your own affairs) or have you ever been committed to a mental institution?” The state and federal forms that Cho filled out are currently held by the Virginia state police in their case investigation file, but were destroyed in the CCRE file, as required after 30 days. The state police did not permit the panel to view copies of the forms in their investigation file but indicated that Cho answered “no” to this question on both forms. It is impossible to know whether Cho understood that the proper response was “yes” and whether his answers were mistakes or deliberate falsifications. In any event, the fact remains that Cho, a person disqualified from purchasing firearms, was readily able to obtain them.

¹⁰ The panel notes that the federal law terminology referring to mentally ill persons as “mentally defective” is outmoded based on current medical and societal understanding of mental health.

AMMUNITION PURCHASES

Cho purchased ammunition on several occasions in the weeks and months leading up to the shootings. On March 13, 2007, he purchased a \$10 box of practice ammunition from Roanoke Firearms at the same time he bought his Glock 9mm pistol. On March 22 and 23, he purchased a total of five 10-round magazines for the Walther on the Internet auction site eBay. In addition, Cho purchased several 15-round magazines along with ammunition and a hunting knife on March 31 and April 1 at local Wal-Mart and Dick's Sporting Goods stores. With these magazines loaded, Cho would be able to fire 15 rounds, eject the magazine, and load a fresh one in a matter a moments. By the time he walked into Norris Hall, Cho had almost 400 bullets in magazines and loose ammunition.

Federal law prohibited Cho from purchasing ammunition. Just as it prohibits anyone from purchasing a gun who has been found to be a danger to self or others, it prohibits the same individuals from buying ammunition.¹¹ However, unlike firearms, there is no background check associated with purchasing ammunition. Neither does Virginia law place any restrictions on who can purchase ammunition. It does prohibit the use of some types of ammunition while committing a crime, but does not regulate the purchase of such ammunition.¹² Cho did not use any special types of ammunition that are restricted by law.

The panel also considered whether the previous federal Assault Weapons Act of 1994 that banned 15-round magazines would have made a difference in the April 16 incidents. The law lapsed after 10 years, in October 2004, and had banned clips or magazines with over 10 rounds. The panel concluded that 10-round magazines that were legal would have not made much difference in the incident. Even pistols with rapid loaders could have been about as deadly in this situation.

¹¹ 18 U.S.C § 922(d)(4)

¹² Va. Code § 18.2-308.3

GUNS ON CAMPUS

Virginia Tech has one of the tougher policy constraints of possessing guns on campus among schools in Virginia. However, there are no searches of bags or use of magnetometers on campus like there are in government offices or airports. Cho carried his weapons in violation of university rules, and probably knew that it was extremely unlikely that anyone would stop him to check his bag. He looked like many others.

Virginia universities and colleges do not seem to be adequately versed in what they can do about banning guns on campus under existing interpretations of state laws. The governing board of colleges and universities can set policies on carrying guns. Some said their understanding is that they must allow anyone with a permit to carry a concealed weapon on campus. Others said they thought guns can be banned from buildings but not the grounds of the institution. Several major universities reported difficulty understanding the rules based on their lawyers' interpretation. Most believe they can set rules for students and staff but not the general public. Virginia Tech, with approval of the state Attorney General's Office, had banned guns from campus altogether.

This issue came to a head at one of the panel's public meetings held at George Mason University. It was known that many advocates of the right to carry concealed weapons on campus were planning to attend the meeting carrying weapons to make a point. GMU did not know they could have established a policy to stop the weapons from being carried into their buildings.

The Virginia Tech total gun ban policy was instituted a few years ago when it was accidentally discovered that a student playing the role of a patient in a first aid drill was carrying a concealed weapon. That student, now a Virginia Tech graduate with a master's degree in engineering, stated to the panel that he started carrying a weapon after witnessing assaults and hearing about other crimes on the Virginia Tech campus. He and other students told the panel

that they felt it was safer for responsible people to be armed so they could fight back in exactly the type of situation that occurred on April 16. They might have been able to shoot back and protect themselves and others from being injured or killed by Cho. The guns-on-campus advocates cited statistics that overall there are fewer killings in environments where people can carry weapons for self-defense. Of course if numerous people had been rushing around with handguns outside Norris Hall on the morning of April 16, the possibility of accidental or mistaken shootings would have increased significantly. The campus police said that the probability would have been high that anyone emerging from a classroom at Norris Hall holding a gun would have been shot.

Data on the effect of carrying guns on campus are incomplete and inconclusive. The panel is unaware of any shootings on campus involving people carrying concealed weapons with permits to do so. Likewise, the panel knows of no case in which a shooter in campus homicides has been shot or scared off by a student or faculty member with a weapon. Written articles about a campus shooting rarely if ever comment on permits for concealed weapons, so this has been difficult to research. It may have happened, but the numbers of shootings on campuses are relatively few—about 16 a year at approximately 4,000 colleges and universities, according to the U.S. Department of Education Campus Crime Statistics for 2002–2004. It could be argued that if more people carried weapons with permits, the few cases of shootings on campus might be reduced further.

On the other hand, some students said in their remarks to the panel that they would be uncomfortable going to class with armed students sitting near them or with the professor having a gun. People may get angry even if they are sane, law-abiding citizens; for example, a number of police officers are arrested each year for assaults with weapons they carry off duty, as attested to by stories in daily newspapers and other media.

Campus police chiefs in Virginia and many chief-level officers in the New York City region who were interviewed voiced concern that as the number of weapons on campuses increase, sooner or later there would be accidents or assaults from people who are intoxicated or on drugs who either have a gun or interact with someone who does. They argued that having more guns on campus poses a risk of leading to a greater number of accidental and intentional shootings than it does in averting some of the relatively rare homicides. (See Appendix K for an article about the recent discharge of a gun by someone intoxicated in a fraternity house. Although a benign incident, it illustrates the concern.)

The panel heard a presentation from Dr. Jerald Kay, the chair of the committee on college mental health of the American Psychiatric Association about the large percentage of college students who binge drink each year (about 44 percent), and the surprisingly large percentage of students who claim they thought about suicide (10 percent). College years are full of academic stress and social stress. The probability of dying from a shooting on campus is smaller than the probability of dying from auto accidents, falls, or alcohol and drug overdoses.

KEY FINDINGS

Cho was able to purchase guns and ammunition from two registered gun dealers with no problem, despite his mental history.

Cho was able to kill 31 people including himself at Norris Hall in about 10 minutes with the semiautomatic handguns at his disposal. Having the ammunition in large capacity magazines facilitated his killing spree.

There is confusion on the part of universities as to what their rights are for setting policy regarding guns on campus.

RECOMMENDATIONS

VI-1 All states should report information necessary to conduct federal background checks on gun purchases. There should be federal incentives to ensure compliance. This should apply to states whose requirements are different from federal law. States should become fully compliant with federal law that disqualifies persons from purchasing or possessing firearms who have been found by a court or other lawful authority to be a danger to themselves or others as a result of mental illness. Reporting of such information should include not just those who are disqualified because they have been found to be dangerous, but all other categories of disqualification as well. In a society divided on many gun control issues, laws that specify who is prohibited from owning a firearm stand as examples of broad agreement and should be enforced.

VI-2 Virginia should require background checks for all firearms sales, including those at gun shows. In an age of widespread information technology, it should not be too difficult for anyone, including private sellers, to contact the Virginia Firearms Transaction Program for a background check that usually only takes minutes before transferring a firearm. The program already processes transactions made by registered dealers at gun shows. The practice should be expanded to all sales. Virginia should also provide an enhanced penalty for guns sold without a background check and later used in a crime.

VI-3 Anyone found to be a danger to themselves or others by a court-ordered review should be entered in the Central Criminal Records Exchange database regardless of whether they voluntarily agreed to treatment. Some people examined for a mental illness and found to be a potential threat to themselves or others are given the choice of agreeing to mental treatment voluntarily to avoid being ordered by the courts to be treated involuntarily. That

does not appear on their records, and they are free to purchase guns. Some highly respected people knowledgeable about the interaction of mentally ill people with the mental health system are strongly opposed to requiring voluntary treatment to be entered on the record and be sent to a state database. Their concern is that it might reduce the incentive to seek treatment voluntarily, which has many advantages to the individuals (e.g., less time in hospital, less stigma, less cost) and to the legal and medical personnel involved (e.g., less time, less paperwork, less cost). However, there still are powerful incentives to take the voluntary path, such as a shorter stay in a hospital and not having a record of mandatory treatment. It does not seem logical to the panel to allow someone found to be dangerous to be able to purchase a firearm.

VI-4 The existing attorney general's opinion regarding the authority of universities and colleges to ban guns on campus should be clarified immediately. The universities in Virginia have received or developed various interpretations of the law. The Commonwealth's attorney general has provided some guidance to universities, but additional clarity is needed from the attorney general or from state legislation regarding guns at universities and colleges.

VI-5 The Virginia General Assembly should adopt legislation in the 2008 session clearly establishing the right of every institution of higher education in the Commonwealth to regulate the possession of firearms on campus if it so desires. The panel recommends that guns be banned on campus grounds and in buildings unless mandated by law.

VI-6 Universities and colleges should make clear in their literature what their policy is regarding weapons on campus. Prospective students and their parents, as well as university staff, should know the policy related to concealed weapons so they can decide whether they prefer an armed or arms-free learning environment.